

**Tudor Realty Services Corp. and Service Employees International Union, Local 32B-32J, AFL-CIO.**  
Case AO-294

May 12, 1992

ADVISORY OPINION

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT  
AND RAUDABAUGH

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board's Rules and Regulations, on April 14, 1992, Tudor Realty Services Corp. (the Employer) filed a petition for Advisory Opinion with attachments requesting a determination that the Board would assert jurisdiction over it. In pertinent part, the petition and attachments allege as follows:

1. A proceeding, Case SE-58143, is currently pending before the New York State Employment Relations Board in which Service Employees International Union, Local 32B-32J, AFL-CIO (the Union) is requesting certification as exclusive representative of certain employees of the Employer.

2. The Employer is a New York corporation engaged in management of residential buildings including a residential cooperative building located at 741 West End Avenue, New York, New York.

3. In the past 12-month period, the Employer had gross revenues in excess of \$500,000, purchased materials or services valued in excess of \$50,000 directly from outside the State of New York, and had revenues in excess of \$50,000 from the sale or performance of services directly to customers outside the State of New York.

The Employer states in its petition that the Union has neither admitted nor denied the aforesaid commerce data and that the New York State Employment Relations Board has made no findings with respect thereto. Moreover, the petition also states that there are no representation or unfair labor practice proceedings involving the Employer and the Union pending before the Board.

Following receipt of this petition for Advisory Opinion, the Board was administratively advised that in Case 2-RC-21145 currently pending in Region 2 of the NLRB, the Employer and the Union stipulated that the Employer is engaged in commerce within the meaning of the Act. This stipulation was signed on April 14, 1992, by the same attorney who signed the instant petition on April 10, 1992. Case 2-RC-21145 involves a different building and a different bargaining unit than the one at issue in this advisory opinion request. Additionally, the Employer alleges that the Union is attempting to circumvent the Board's jurisdiction by utilizing the procedures of the New York State Board for the 741 West End Avenue building. Based

on this assertion, we have determined to render an Advisory Opinion herein.

All parties were served with a copy of the petition for Advisory Opinion. However, none filed a response as permitted by Section 102.101 of the Board's Rules and Regulations.

Having duly considered the matter,<sup>1</sup> we find that the Board would assert jurisdiction over the Employer. The Board applies a \$500,000 discretionary jurisdictional standard for residential condominiums and cooperatives.<sup>2</sup> As the Employer alleges that its total annual income exceeds \$500,000, assuming that this income is from the management of building properties, it is clear that the Employer would satisfy the Board's discretionary standard.<sup>3</sup> Moreover, the Employer further alleges that its annual out-of-state purchases of services and materials exceeds \$50,000 and that its gross revenues from the sale or performance of services to customers located outside the State also exceeds \$50,000. Accordingly, the Employer clearly satisfies the Board's nonretail standard for asserting jurisdiction.<sup>4</sup> Based on the above allegations, the parties are advised that the Board would assert jurisdiction over the Employer.<sup>5</sup>

<sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>2</sup> See *Coastal Property Services*, 299 NLRB 79 (1990); *Imperial House Condominiums*, 279 NLRB 1225 (1986) (reaffirming the establishment of a \$500,000 jurisdictional amount for residential condominiums and cooperatives), aff'd, 831 F.2d 999 (11th Cir. 1987).

<sup>3</sup> The Board has traditionally aggregated the gross revenues derived from all residential buildings managed by an employer in determining whether the employer satisfies the Board's discretionary standard. See, e.g., *Mandel Management Co.*, 229 NLRB 1121 (1977). In so finding, we have assumed that the Employer is a single employer with respect to the operations included in its commerce data.

<sup>4</sup> The allegations in the petition and the attachments do not expressly state that all of the \$500,000 gross revenue is related to management of the buildings. However, we have nonetheless determined that it would effectuate the policies of the Act to assert jurisdiction. See *135-45 West Kingsbridge Avenue Assn.*, 300 NLRB 946 (1990). In addition to all of the other data set forth above, we rely on the stipulation in Case 2-RC-21145. Such a stipulation may be given binding effect as to the stipulating parties. See, e.g., *Commissary of Great Race Pizza Shoppes*, 277 NLRB 1175, 1176 (1985) (settlement stipulation of single employer status binding on Respondent as to General Counsel's motion to add affiliated business enterprise as party after the respondent failed to comply with settlement). However, such a stipulation cannot foreclose our inquiry where it is alleged to be contrary to the Board's jurisdictional policies (see *East Newark Realty Corp.*, 115 NLRB 483 (1956)). Because the stipulation has been approved by the Regional Director for Region 2 and the parties herein, we rely in part on it in issuing this Advisory Opinion.

<sup>5</sup> The Board's Advisory Opinion proceedings under Sec. 102.98(a) are designed primarily to determine whether an employer's operations meet the Board's "commerce" standards for asserting jurisdiction. Accordingly, the instant Advisory Opinion is not intended to express any view whether the Board would certify the Union as a representative of the petitioned-for unit under Sec. 9(c) of the Act. See generally Sec. 101.40(e) of the Board's Rules and Regulations.